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Working in Cooperation with the
Office of Attorney General Martha Coakley

August 22, 2011

Geoffrey G. Why, Commissioner
Commonwealth of Massachusetts
Department of Telecommunications and Cable
1000 Washington Street, 8th Floor
Boston, MA 02118-6500

Via Email
dtc.efiling@state.ma.us

RE: Comments Regarding the Modernization of Consumer Protection Regulations

Dear Commissioner Why:

The Cambridge Consumers' Council ("CCC")[1] hereby submits comments in response to the Notice of Public Informational Forums issued by the Department of Telecommunication and Cable ("DTC" or "Department") on July 7, 2011 concerning the consumer protection regulations regarding billing and termination of service administered by the Department. We believe this is a particularly important time to review such regulations as usage and technology are constantly evolving in the telecommunication and cable television industries. As such, we welcome this opportunity to respond to the DTC's inquires and applaud the DTC's initiative of reviewing such regulations with the hope that much needed reform will occur. The CCC limits its comments to the DTC's inquiries on consumer protection regulations for wireline, wireless, and cable television; issues regarding bundled services; and cramming practices.[2] As such, we offer the following for your consideration:

I. General Regulatory Scheme—Wireline and Wireless Service, Cable Television Service & Bundles

The CCC concurs that current consumer protection regulations related to wireline and cable television do not accurately portray the current communication and media service markets, their evolving products and the way consumers use such products. We believe it will be beneficial for the DTC to modernize its wireline and wireless service regulations while promulgating additional regulations regarding wireless service and bundled packages in order to maintain the consumer's influence in these industries. As we have learned in the past, when a consumer's clout is compromised, an equal playing field no longer exists in the marketplace.

Consumers are known for choosing specific products based on their personal preferences and expectations for such products. As most communication and media services require the consumer to enter into a contract for a specific period of time, it is particularly important to ensure that the information consumers are using to

[1] The Cambridge Consumers' Council, a City of Cambridge agency, provides resources, support and influence on consumer matters affecting the citizenry. The Council serves as a local consumer program that works in cooperation with the Office of the Attorney General to mediate individual/business complaints in an attempt to avoid legal action by either party. Please note: This correspondence does not necessarily reflect the views of the City of Cambridge or any member of the Cambridge City Council.

[2] The CCC's decision not to address any particular issue presented by the DTC should not be construed as repudiation or support of such issue.

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make these decisions is provided prior to the consummation of the transaction in a clear, non-misleading manner that makes use of plain language.

The CCC recognizes that it may be difficult to promulgate a single set of consumer protection regulations of general application for wireline, wireless and cable television as each service is fundamentally different, despite similar billing practices. For example, some services have additional features, which a consumer may or may not choose to utilize after initial subscription. A consumer may be directly solicited by an agent of the business for some features, while other services may be directly accessed by the consumer on their own accord without solicitation. Therefore, specific regulations regarding each transaction and how the actual service is transmitted may require a different scope.

Please note the CCC is cognizant that overregulation can hamper innovation in the marketplace; however, we believe reasonable changes to the current regulatory landscape can be made to ensure consumer safety, especially among our most vulnerable consumers—senior citizens, persons with disabilities and non-English speakers. Thus, we suggest the DTC to consider the following for a set of tailored consumer protections:

A. Wireless Service

Many consumers are now choosing to rid their wireline phone and simply rely on their wireless phone as their only form of telephone service. Regardless of this choice, most consumers throughout the United States utilize a wireless phone for at least some portion of their communication needs. [3] With the lack of a concise, overarching set of federal regulations for wireless service—particularly surrounding service quality standards, disclosure of service area and specific billing practices related to contracts—new regulations would help ensure safety in the marketplace as wireless service has become a major method of voice communication among the residents of the Commonwealth.[4] The CCC proposes the following suggestions for consideration:

1. <u>Implement disclosure requirements for service, contracts and plans.</u>

Upon entering a wireless telephone contract, a consumer must consider various factors to ensure the product they are purchasing is going to meet his needs. A consumer has the right to know whether or not the product they purchase is going to function as it was designed to. Thus, a consumer should have the right to know a provider's wireless service area in an attempt to ascertain whether or not he will be able to receive wireless telephone service at least at a primary residence. The CCC believes the DTC can ensure such disclosure occurs by implementing a rule where wireless provider make available a map showing the wireless telephone service area prior to whenever a plan or contract for service is entered into, or upon request of the consumer.

Other pertinent purchase information—the terms, conditions and length of a contract; early or other termination fees, the length of any trial period and one-time initiation fees; and information related to plans, including a monthly base charge, per-minute charges for minutes not included in the plan, the method of calculating minutes charged and data charges—should also be readily available to the consumer prior to agreeing to any terms of service.

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[3] The CTIA, the wireless industry association, estimated there are 302.9 million wireless connections in the U.S as of December 2010. *See* CTIA, 50 Wireless Quick Facts, http://www.ctia.org/media/index.cfm/AID/10379 (last visited August 19, 2011).

[4] As of June 30, 2010, the Federal Communications Commission ("FCC") estimates there are 6.3 million mobile telephony subscribers in Massachusetts. *See* FCC, Local Telephone Competition Report: Status as of June 30, 2010, http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db0321/DOC-305297A1.pdf (last visited August 19, 2011).

Finally, all information pertaining to billing should be itemized and disclosed in a clear, easily read format on a monthly billing statement.

2. Require express affirmation of early termination fees and the ability to calculate such fees on a pro rata basis.

Early termination fees are often considered to be hefty by the average consumer, and are not always considered when reading the terms and conditions of a contract. As such, the CCC urges the DTC to implement a rule requiring express affirmation of such fees, either by a written or oral statement. Such early termination fees should also be prorated over the term of a wireless subscriber's contract, in a manner where the Department believes the amount of the early termination fee directly relates to the reasonable recovery of the cost of the device or other legitimate business expenses.

3. Establish a service monitoring method for quality assurance.

As close to 97 % of the Commonwealth’s population maintains a wireless telephone, the DTC should retain the right to inspect the quality of services being provided to consumers. As such, the CCC suggests the Department implement a rule which requires regular reporting of dropped calls, signal strength and any other service related data as seen fit by the Department. Such information should also be made available to a consumer upon request.

B. Wireline Service

Despite the increase in abandoning wireline service, many consumers still rely on their wireline for communication needs. It also remains as an essential tool for senior citizens who often connect their wireline with an emergency response system, such as Lifeline. Given this importance, the CCC proposes the following:

1. Encourage identification of non-English speakers.

The CCC recognizes the Department requires providers to publish bilingual notices in situations as described in D.P.U. 18448 B&T Rule 3.6(b); however, we believe the Department should urge all service providers to identify non-English speaking subscribers. This is particularly important when identifying persons over the age of 65, as non-English speakers may be unable to review important notices a provider has created as part of their duty to devise a method of identifying elderly persons to prevent termination of services.

2. Expand the personal emergency or serious illness protection [D.P.U. 18448 B&T Rule 5.15] to account for the needs of persons with disabilities.

The CCC believes the current discontinuance of service for personal emergency or serious illness fails to grasp the need of persons with disabilities who may require access to doctors or medical providers beyond the rule’s established time period. Therefore, we urge you to take such needs into account when revising any applicable rules.

C. Cable Television

As the cost of cable has increased since the original enactment of the DTC’s regulations, the current regulation regarding billing due dates, as established by 207 CMR 10.05(1), does not ensure a reasonable amount of time exists from the when a consumer receives their bill to when it is due. As such, the CCC suggests the following for consideration:

1. <u>Modify 207 CMR 10.05(1) to reflect the current reality of the cost of cable television service.</u>

The CCC urges the DTC to afford consumers at least of twenty-eight (28) days, following the mailing date of the bill, to render payment to the subscriber. Such a period should account for the lag experienced in the delivery of the billing statement while still granting the consumer a reasonable period of time to submit payment.

II. Bundled Services

Bundled services has become popular among consumers as it allows for "one-stop shopping" with a service provider. It also creates a way for consumers to easily manage their telecommunication and media bills by allowing one to pay one service provider versus having to pay multiple providers. Unfortunately, many consumers experience difficulty in managing their bundles after the expiration of any applicable promotional or introductory rates. This can often lead to default on behalf of a consumer, which may result in immediate suspension of services—some regulated by the Department in combination with others that that are not. As a result of this reality, the CCC suggests the following:

1. <u>Require providers that offer bundled services packages to provide a sample bill for services excluding any applicable promotional or introductory rates within a reasonable time period after the purchase of a bundled services package.</u>

Many consumers do not comprehend the actual cost of their bundled services after the expiration of any applicable promotional or introductory rates. By providing a sample bill, service providers will not only avoid consumers' concerns regarding "bill shock," but such a tool will create the opportunity for consumers to be able to budget their finances in preparation for the expiration of such rates. A similar practice already occurs among some wireless providers who supply a copy of a typical billing statement to the consumer demonstrating an estimation of charges for the first month of service upon initial purchase.

2. <u>Establish a specific billing period that provides the consumer with an adequate amount of time to render payment.</u>

Currently, the DTC has established payment due date standards for wireline service [D.P.U 18448 B&T Rule 3.2] and cable television service [207 CMR 10.05 (1)]; however, no guidance has been issued for bundled services that often contain a combination of both services. Given the difficult economic times, consumers should be afforded a reasonable payment period, of at least of twenty-eight (28) days, following the mailing date of the bill. Such a period should account for the lag experienced in the delivery of the billing statement. The CCC also suggests the DTC consult the Credit Card Accountability, Responsibility, and Disclosure (CARD) Act of 2009 for the inclusion of additional payment protections, including, but not limited to, treatment of weekend and holiday deadlines and deadlines that fall in the middle of the day.[5]

[5] *See Credit* Card Accountability, Responsibility, and Disclosure (CARD) Act of 2009, Public Law 111–24—May 22, 2009, http://www.gpo.gov/fdsys/pkg/PLAW-111publ24/pdf/PLAW-111publ24.pdf (last visited August 19, 2011).

3. Expand discontinuance of service protections to apply to essential telecommunication services that are part of bundled packages.

Given the fact that many seniors and persons with disabilities rely on their telecommunication services for access to emergency services and medical care providers, the CCC encourages the DTC to extend both the Serious Illness and Personal Emergency protection and Elderly Persons protection, if not already applicable under the current regulatory scheme, to all essential telecommunication services that are part of a bundled package.[6] The CCC also suggests the DTC expand the definition of either protection to take into account the needs of persons with disabilities.

4. Afford the option for deferred payment as already established by D.P.U. 18448 B&T Part 7, and in the event of termination, allow for billing to occur on a pro rata basis according to the period the consumer received services.

As our economy continues to recover, consumers are still struggling to manage their finances. With the option of deferred payment for qualifying subscribers, consumers would be afforded the opportunity to catch up on an outstanding bill without having to deal with the possibility of accruing additional suspension or termination fees.[7] In the event of termination, a consumer is no longer able to use such services where not established rule for the prevention of discontinuance of service does not exist.

III. Cramming Practices

The Federal Communications Commission ("FCC"), cramming practices are defined as:

> Cramming is the practice of placing unauthorized, misleading or deceptive charges on a consumer's telephone bill. Crammers rely on confusing telephone bills in an attempt to trick consumers into paying for services they did not authorize or receive, or that cost more than the consumer was led to believe. Cramming can also occur if a local or long distance company, or another type of service provider, does not clearly or accurately describe all of the relevant charges when marketing a service.[8]

Most often consumers encounter cramming when additional services are added to their bill when they may not have expressly agreed to a service from a third-party provider or agreed to try a service for a limited period at a promotional rate from their own provider. In terms of the latter, if a consumer fails to opt out of the promotion during the period afforded, charges automatically accrue on the monthly billing period. The CCC urges the DTC to promulgate regulations regarding cramming for both wireline and wireless service in the following manner:

1. Expand the Department's current definition of cramming to model the FCC's definition so that is applicable to both wireless and wireline service.

As cramming can occur on both wireless and wireline service, the CCC believes it is important to create a comprehensive definition that will allow for meaningful enforcement.

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6 Although it may be considered to be an essential communication services, the CCC recognizes no regulations may be issued with respect to VoIP or IP enabled service pursuant to M.G.L. c 25C §6A.

7 We recognize the difficulty in implementing such a rule as bundled services often contain services regulated by the DTC and services not regulated by the DTC. Regardless, if a company does offer a deferred payment option, clear and conspicuous disclosure of such should be required.

8 *See* FCC, Cramming, http://www.fcc.gov/topic/cramming (last visited August 19, 2011).

2. Prohibit any provider of a service, whether a direct service provider or a third-party service provider, from billing a subscriber for service that was not affirmatively requested.

For this purpose, if a provider chooses to rely on oral affirmation, records should be kept demonstrating the date of the request and the employee that processed the request. In cases where affirmation occurs via phone, a third party verification system collecting appropriate data as set forth in 220 CMR 13.03(1) should be used. The DTC should also maintain the right to inspect all kept records as the Department sees fit.

3. Require additional disclosure on the subscriber's monthly billing statement regarding additional purchased service(s) besides the subscriber's original intended service. If a service is purchased through a third-party provider, the Department may require a separate notice regarding the purchase to be directly sent to the subscriber.[9]

Should a consumer purchase a service, written disclosure should appear in a clear and conspicuous manner on the next applicable billing statement, or on a separate statement provided by a third party within a reasonable time, with the following information: detailed description and the nature of the service purchased; date service was purchased; any applicable promotional information including the promotion rate, promotion expiration date, cost to consumer after the expiration date, required cancellation date to opt out of service prior to being billed at a regular rate, information concerning any applicable early cancellation fees and information on how the consumer can opt out of such service; and consumer assistance contact information a consumer can use to inquire about cancellation, service issues or billing disputes. Applicable information should remain on a consumer's monthly billing statement until a service cancellation is processed and the consumer has satisfied their payment obligation to the service provider.

IV. Conclusion

Again, we thank you for this opportunity to comment. We look forward to continue working with the Department on important consumer matters.

Respectfully Submitted,

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[9] In May 2011, upon request of the Vermont Attorney General, the Vermont state legislature passed an amendment banning most third-party charges on wireline telephone bills due to an uptick in cramming. As a result, third-parties are required to directly notify subscribers after purchase. *See* Vermont Law 9 V.S.A. §2466.